

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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| WESLEY A. McGUIRE |) | |
| Deceased |) | |
| VS. |) | |
| |) | Docket No. 190,596 |
| MARTIN K. EBY CONSTRUCTION COMPANY, INC. |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| AETNA CASUALTY & SURETY COMPANY |) | |
| Insurance Carrier |) | |

ORDER

Decedent's dependents requested review of the Award entered by Assistant Director Brad E. Avery dated January 4, 1996. The Appeals Board heard oral argument May 8, 1996.

APPEARANCES

John D. Roper of Wichita, Kansas, appeared for decedent's dependents. Edward D. Heath, Jr., of Wichita, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Assistant Director denied the request for death benefits. The only issue on this review is whether decedent's suicidal death is compensable under the Kansas Workers Compensation Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award denying benefits entered by the Assistant Director should be affirmed. The Appeals Board agrees with the Assistant Director's conclusion that decedent's February 2, 1994, suicidal death is not compensable under the Workers Compensation Act.

The Court of Appeals in Rodriguez v. Henkle Drilling & Supply Co., 16 Kan. App. 2d 728, 828 P.2d 1335, rev. denied 251 Kan. 939 (1992), adopted the chain of causation test to determine the compensability of suicides under the Workers Compensation Act. In Rodriguez, the Court held:

"We adopt in Kansas the chain-of-causation rule that an employee's death by suicide is compensable if the original injuries received in the course of and arising out of an employee's employment causes the employee to become dominated by a disturbance of mind of such severity as to override normal rational judgment and result in the employee's suicide." (Syl. ¶ 3.)

"The chain-of-causation rule places the burden on the claimant to prove by a preponderance of the evidence that there was an unbroken chain of causation involving the compensable injury, the disturbance of the mind, and the ultimate suicide." (Syl. ¶ 4.)

In explaining the chain-of-causation rule, the Court cited "Workmen's Compensation-Suicide" 15 A.L.R. 3d. 616, § 5, p. 631 (1967) for the following:

"Where the injury and its consequences directly result in the workman's loss of normal judgment and domination by a disturbance of the mind, causing the suicide, his suicide is compensable. This rule rejects the tort liability concept of fault (which stresses the independent intervening cause), and the criminal-law standard of insanity (which requires that the person not know what he is doing), substituting therefor the 'chain-of-causation' or 'but for' test and the requirement of an uncontrollable 'compulsion' to commit suicide."

The Assistant Director found a broken chain-of-causation between decedent's June 25, 1992, work-related accident and February 1994 suicide. The Appeals Board agrees with the Assistant Director's analysis that various factors, including alcohol abuse and

family strife, caused decedent's mental disturbance and the resultant suicide rather than the June 1992 work-related accident.

In the early morning hours of February 2, 1994, decedent committed suicide by carbon monoxide poisoning. The morning before on February 1, 1994, claimant began drinking at 11 a.m. and continued drinking until he returned home at 2 a.m. on February 2, 1994. The coroner's report indicated decedent had a blood alcohol level of .166. Both persons who were with decedent the morning of his death indicated he was extremely intoxicated. Decedent had a long history of alcohol abuse. Although decedent underwent treatment for his drinking in the 1980s, he continued to drink. The morning of the suicide, decedent's girlfriend attempted to talk decedent out of leaving the house because he was extremely intoxicated.

The Appeals Board finds that decedent's intoxication on February 2, 1994, impaired the decedent's abilities to think rationally and make proper judgments. This conclusion is based upon the testimony of both psychological experts, Harold J. McNamara, Ph.D., and T. A. Moeller, Ph.D.

In addition to the above finding that there was a broken chain-of-causation between the June 1992 and the February 1994 suicide, the Appeals Board finds that decedent's suicide is not compensable for a second reason. K.S.A. 1991 Supp. 44-501(d) provides in part:

"If it is proved that the injury to the employee results from the employee's deliberate intention to cause such injury, or from the employee's willful failure to use a guard or protection against accident required pursuant to any statute and provided for the employee, or a reasonable and proper guard and protection voluntarily furnished the employee by the employer, **or substantially from the employee's intoxication**, any compensation in respect to that injury shall be disallowed. **The employer shall not be liable under the workers compensation act where the injury, disability or death was substantially caused by the employee's use of any drugs, chemicals or any other compounds or substances, including but not limited to, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens**, except such drugs or medications which are available to the public without a prescription from a health care provider and which are used for the treatment of an illness, or which were obtained and used by the employee pursuant to and in accordance with such a prescription." (Emphasis added.)

Both Dr. McNamara and Dr. Moeller indicated that decedent's intoxication would have impaired his judgment and ability to think rationally. Based upon the finding that decedent was extremely intoxicated at the time of the suicide, the Appeals Board also finds that decedent's death was substantially caused by that intoxication. Therefore, K.S.A. 1991 Supp. 44-501(d) prevents decedent's suicide from being treated as a compensable event.

Counsel argued that the testimony of Dr. Moeller should not be considered. The Appeals Board disagrees and finds that counsel's arguments go to the weight of the testimony rather than to its admissibility.

The Appeals Board hereby adopts the Assistant Director's findings and conclusions to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated January 4, 1996, entered by Assistant Director Brad E. Avery should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I would reverse the Award denying benefits and find decedent's suicidal death on February 4, 1994, is compensable under the Workers Compensation Act because there is an unbroken chain-of-causation between the consequences of decedent's work-related back injury and his death.

The majority acknowledges that the Court of Appeals in Rodriguez v. Henkle Drilling & Supply Co., 16 Kan. App. 2d 728, 828 P.2d 1335, rev. denied 251 Kan. 939 (1992), adopted the chain-of-causation test to determine the compensability of suicides under the Workers Compensation Act.

However, the majority affirms the Assistant Director who found the chain-of-causation broken because the decedent had a history of heavy drinking and family discord. Other factors cited by the Assistant Director which he found played a role in leading to the suicide

were claimant's disappointment over the size of his workers compensation settlement offer and lack of income. I agree these other factors contributed to decedent's disturbance of the mind. However, I would also find these factors were aggravated by the accident and were part and parcel of the consequences of the injury and, therefore, are in the chain-of-causation.

The evidence is uncontroverted that decedent was drinking very little when he injured his back in June 1992. The evidence is also uncontroverted that decedent began drinking heavily in July 1993 after he learned respondent would not return him to work. Likewise, the greater weight of the evidence indicates that decedent's family discord increased to the point he separated from his ex-wife after learning that respondent would not permit him to return to work. The testimony and affidavits from the various lay witnesses indicate that decedent's demeanor and lifestyle changed for the worse after the respondent's rejection of decedent.

I find the testimony of psychologist, Harold J. McNamara, Ph.D., to be persuasive. As Dr. McNamara indicated, it is rare a single event or single stressor causes someone to commit suicide. Usually there is a sequence of events that occurs over some period of time that leads to the death. According to Dr. McNamara, the sequence of events decedent experienced was directly related to his back injury and the consequences of that injury. Therefore, "but for" the decedent's June 1992 injury, the resultant loss of his job with respondent, and the resulting despondency and its consequences, decedent likely would not have taken his life.

The majority finds decedent's intoxication at the time of his death and the provisions of K.S.A. 1991 Supp. 44-501(d) bar the compensability of decedent's suicide. It is questionable whether intoxication may be used as a defense in circumstances other than determining the cause of the initial work-related accident. Nevertheless, I would find that decedent's suicide did not "substantially result" from his intoxication. Again, it was decedent's despondency and despair that he experienced as a result of the injury and its consequences that created the disturbance of the mind and caused his suicide. Alcohol played a deleterious role in decedent's life, but the evidence is strong and uncontroverted that decedent returned to abusing alcohol after learning respondent would not permit him to return to work. Under the facts, decedent's heavy drinking at the time of his death was one of several consequences of the work-related injury. This conclusion is supported by Dr. McNamara's testimony. Also, Dr. McNamara rejected the notion that decedent's intoxication caused decedent to commit suicide. According to Dr. McNamara the job loss due to the injury was the unique event that caused the suicide. Accordingly, I would find the claim compensable.

BOARD MEMBER

c: John D. Roper, Wichita, KS
 Edward D. Heath, Jr., Wichita, KS
 Brad E. Avery, Assistant Director
 Office of Administrative Law Judge, Topeka, KS
 Philip S. Harness, Director